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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

VOTE YES FOR ALASKA'S FAIR SHARE,)

Plaintiff,)

v.)

KEVIN MEYER, LIEUTENANT)
GOVERNOR OF THE STATE OF ALASKA,)
and STATE OF ALASKA, DIVISION OF)
ELECTIONS,)

Defendants.)

Case No. 3AN-19-11106 CI

COMPLAINT

Vote Yes for Alaska's Fair Share ("Fair Share"), an Alaska-based nonprofit organization, by and through counsel, Brena, Bell & Walker, P.C., for its complaint against Lieutenant Governor Kevin Meyer ("Meyer") and the State of Alaska, Division of Elections ("Division"), complains and alleges as follows:

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INTRODUCTION

The right to propose and enact laws through initiative is a constitutional right of all Alaskans that should not be compromised by Defendant Meyer or any other state official in the conduct of their official duties necessary to advance an initiative to the ballot. Defendant Meyer's or any other state official's disagreement with a proposed law through initiative should not be permitted to shape the conduct of their official duties.

In this case, Defendant Meyer certified the proposed law, the Fair Share Act, as meeting all of the constitutional and statutory requirements necessary to advance to the ballot. In doing so, Defendant Meyer's certification was based, in part, on the opinion of the Attorney General that stated, "we conclude that the application complies with the constitutional and statutory provisions governing the initiative process."

While Defendant Meyers and the Attorney General agreed that the Fair Share Act met all the constitutional and statutory requirements to advance to the ballot, they did so to be charitable reluctantly. The Attorney General's opinion goes beyond assisting Defendant Meyer in determining whether the Fair Share Act meets the constitutional and statutory requirements to advance to the ballot. Instead, with often contradictory and confused analyses, the Attorney General's opinion raises and then refuses to opine on several potential, future constitutional and legal issues unrelated to whether the Fair Share Act meets the constitutional and statutory requirements to advance to the ballot. It does so notwithstanding its observation that the Alaska Supreme Court "refrain[s] from giving pre-enactment opinions on the constitutionality of

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statutes whether proposed by the legislature or by the people through their initiative power, since an opinion on a law not yet enacted is necessarily advisory.”

After Defendant Meyer certified the Fair Share Act as meeting all of the constitutional and statutory requirements to advance to the ballot, his primary remaining duty was to prepare a ballot title and proposition. AS 15.45.180. The proposition is required by law to “give a true and impartial summary” of the Fair Share Act.

This case concerns whether Defendant Meyer met his duty to prepare “a true and impartial summary” of the Fair Share Act (“Summary”). He did not. Instead, Defendant Meyer’s and the Attorney General’s reluctant certification found clear expression in the confused and contradictory Summary they have advanced. The essential purpose of the Summary is to be a true and impartial description of the Fair Share Act, but the Summary advanced by Defendant Meyer is neither. These actions by Defendant Meyer undercut the initiative rights of Alaskans and should not be countenanced by the courts. The Summary should be corrected to ensure Fair Share’s constitutional and statutory rights associated with the initiative process are not compromised by Defendant Meyer, and the Fair Share Act is truly and impartially described on the ballot for voters.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Fair Share is a nonprofit organization of Alaskans across the political spectrum who seek to ensure that Alaska receives its fair share of the revenues generated by its oil resources. Fair Share is organized under the laws of the State of Alaska and is in all ways

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qualified to maintain this action. Fair Share's petition sponsors are Robin O. Brena, Jane R. Angvik, and R. Merrick Pierce.

2. Defendant Meyer is being sued in his official capacity as Lieutenant Governor of the State of Alaska.

3. Defendant Division is an agency of the State of Alaska within the Office of the Lieutenant Governor.

4. This Court has jurisdiction over this dispute under AS 22.10.020 and AS 15.45.240.

5. Alaska Statute 15.45.240 provides that "[a]ny person aggrieved by a determination made by the lieutenant governor under AS 15.45.010--15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given."

6. Fair Share is an aggrieved person under AS 15.45.240 and may bring suit under Alaska Rule of Civil Procedure 17(b).

7. Defendant Meyer's determination was sent to the sponsors on October 15, 2019. This Complaint is brought within the required 30 days.

8. Venue is proper under Alaska Rule of Civil Procedure 3(c)(2) because Defendants may be personally served in the Third Judicial District, and Fair Share is based in Anchorage.

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FACTUAL ALLEGATIONS

9. Fair Share filed its petition application on August 16, 2019. The petition was designated "An Act relating to the oil and gas production tax, tax payments, and tax credits" ("Fair Share Act") with ID 19OGTX. Under AS 15.45.070, Defendant Meyer was required to either certify or deny the application within 60 days.

10. Under AS 15.45.080, Defendant Meyer could deny certification only if he determined that "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

11. Defendant Meyer certified the application on October 15, 2019. Under AS 15.45.180(a), Defendant Meyer was required to prepare a ballot title and proposition with the assistance of the attorney general. The proposition "shall give a true and impartial summary of the proposed law."

12. The Summary is contained on page 12 of Attorney General Opinion No. 2019200671 (October 14, 2019) ("AGO") and was sent to Fair Share on October 15, 2019. Fair Share had no prior notice of the language of the Summary and found it was not true and impartial as required by AS 15.45.180(a).

13. Following internal review and discussion of the summary, counsel for Fair Share emailed and phoned counsel for Defendants on multiple occasions from October 18 through October 21 seeking to correct the Summary. Counsel for Fair Share also submitted a redlined version of the Summary indicating the provisions which did not meet the true and impartial

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standard established by law, along with an offer to reimburse the State for any additional printing costs associated with correcting the Summary. On October 21, 2019, counsel for Defendants informed Fair Share they would not meet or discuss the Summary with counsel for Fair Share.

CAUSE OF ACTION

14. Fair Share incorporates each of the preceding paragraphs as though fully set forth herein.

15. Defendant Meyer's determination to use the Summary for the Fair Share Act is improper as a matter of law.

Section 2 (Applicability) of the Fair Share Act

16. In relevant part, Section 2 (Applicability) of the Fair Share Act states that its provisions "only apply to oil produced from fields, units, and nonunitized reservoirs north of 68 degrees north latitude that have produced in excess of 40,000 barrels of oil per day in the previous calendar year *and* in excess of 400,000,000 barrels of total cumulative oil production" (emphasis added). The use of the conjunctive term "and" in the applicability section of the Fair Share Act makes clear both production thresholds must be met before the its provisions apply.

17. In contrast, the Summary's description of Section 2 (Applicability) of the Fair Share Act states that "[t]his act would change the oil and gas production tax for areas of the North Slope where the company produced more than 40,000 barrels of oil per day in the prior year *and/or* more than 400 million barrels total. *It is unclear whether the area has to meet both the 40,000 and 400,000 million [sic] thresholds or just one of them*" (emphasis added).

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18. The Summary's description of Section 2 (Applicability) of the Fair Share Act is not a true and impartial description because it incorrectly describes the conjunctive term "and" to mean its opposite, the disjunctive term "or", or something quite different, the combined terms "and/or." The Fair Share Act expressly states its terms "only apply" to areas in which the annual per barrel production threshold "and" the total cumulative production threshold are met. To be true and impartial, the Summary's description should be corrected to use the term "and" and to remove the suggestion that "and" may mean its opposite or something quite different.

19. The Summary's description of Section 2 (Applicability) of the Fair Share Act is also not a true and impartial description because it incorrectly describes the "400 million" barrels of total cumulative oil production threshold as "400,000 million" barrels of total cumulative oil production. The Summary's description of the total cumulative oil production threshold is 1,000 times greater than the one set forth in the Fair Share Act. To be true and impartial, the Summary's description should be corrected to state the correct quantity of oil associated with the total cumulative oil production threshold.

Section 4(b) (Tax on Production Tax Value) of the Fair Share Act

20. In relevant part, Section 1 of the Fair Share Act states, "the Oil and Gas Production Tax in AS 43.55 shall be amended as follows:"

21. In relevant part, Section 4(b) (Tax on Production Tax Value) of the of the Fair Share Act states "An *additional* production tax shall be paid [when the] Production Tax Value of taxable oil is equal to or more than \$50. The additional tax shall be the difference between the average monthly Production Tax Value of a barrel of oil and \$50, multiplied by the volume

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of taxable oil . . . multiplied by 15 percent” (emphasis added). This Section 4(b) of the Fair Share Act simply adds one additional 15 percent progressive bracket at \$50 and above of production tax value.

22. The term “production tax value” is defined under AS 43.55.160. There is only one existing tax on production tax value set forth in AS 43.55, and the existing tax is 35 percent. Nothing in Section 4(b) of the Fair Share Act’s language suggests in any manner that it repeals this existing 35 percent tax on production tax value set forth in AS 43.55.011(e).

23. Section 4(b) of the Fair Share Act uses the terms “additional” tax to describe the tax on production tax value in two separate places. This is because Section 4(b) is an “additional” tax on production tax value. This obvious conclusion was even noted in the Attorney General’s opinion which stated, “The sponsors likely intended for this to be in addition to the existing tax levied by AS 43.55.011(e).” AGO at 5.

24. In contrast, the Summary deletes the term “additional” when describing the Section 4(b) additional tax on production tax value and states that Section 4 “does not designate what tax is in addition to [sic]. The result is that this tax would likely always be less than the tax above.” This summary is not true and impartial. To state the obvious, there is only one existing tax on production net value and it is set forth in AS 43.55.011(e) and as even the Attorney General’s opinion noted, “The sponsors likely intended for this to be in addition to the existing tax levied by AS 43.55.011(e).”

25. Moreover, the Summary deletes the term “additional” and assumes, without supporting language in the Fair Share Act, that the existing tax on production tax value has

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somehow been repealed, and the “additional” tax set forth in Section 4(b) has somehow become the “only” tax on production tax value. This is the only possible explanation behind the interpretive conclusion in the Summary that the Fair Share Act “would likely always be less than” the alternative gross minimum tax under Section 3 of the Fair Share Act. For anyone to interpret Section 4(b) to suggest that an *additional* tax on net production value means the 15 percent additional tax on net production value would become the only tax on net production value in an initiative designed to increase Alaskans’ fair share from the sale of their oil is a strained interpretation at best and certainly is not a true and impartial description of Section 4(b) of the Fair Share Act. The Fair Share Act plainly imposes an additional production tax via amendment without repealing or otherwise altering the existing production tax anywhere in its provisions. The summary should be corrected to reflect what the Attorney General correctly noted as the sponsors’ intention of enacting an additional tax via amendment.

Section 7 (Public Records) of the Fair Share Act

26. In relevant part, Section 7 (Public Records) of the Fair Share Act states, “All filings and supporting information provided by each producer to the Department relating to the calculation and payment of taxes set forth in Sections 3 and 4 shall be a matter of public record.”

27. The common meaning of “matter of public record” in statute and case law is that “a matter of public record” is not confidential. For example, the relevant tax statute AS 40.25.100(a) provides that “[i]nformation in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person ... is not a matter of public record The information shall be kept confidential except when its

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production is required in an official investigation, administrative adjudication ... or court proceeding” (emphasis added). If a document is a matter of public record, confidentiality restrictions do not apply.

28. Again, the Attorney General’s opinion correctly states: “Based on the ‘Notwithstanding ...’ language, we assume this provision is intended to supersede the existing statute for any tax documents submitted for areas falling under section 2 of the initiative bill.” AGO at 6. However, the Attorney General’s opinion goes on to suggest a contradictory and implausible interpretation which it then chooses to include in the Summary.

29. The Summary states: “The Act would also make all tax documents relating to the calculation and payment of the new taxes a matter of public record. *This would mean the documents would be reviewed under the normal Public Records Act process, and any information that needed to be withheld, for example for privacy or balance-of-interests reasons, would be withheld*” (emphasis added). In the Attorney General’s opinion, it suggests the application of the Public Records Act would mean “These [confidential] protections would likely apply to most, if not all, of the tax documents.” AGO at 6.

30. Section 7 of the Fair Share Act plainly states that the documents “shall be a matter of public record,” and the Attorney General has interpreted this phrase to mean there would be no change to the status quo and the tax documents would continue to be confidential. Such an interpretation would render Section 7 of the Fair Share Act completely meaningless. Sponsors do not often advance initiatives for the purpose of changing nothing. The Summary is far from a true and impartial description of Section 7 of the Fair Share Act.

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31. Even assuming, however, the phrase "a matter of public record" may be subject to varying interpretations in future adjudication, a true and impartial description in the Summary under these circumstances would simply use the actual language of Section 7 and state the tax documents would be "a matter of public record." The purpose of the Summary is to provide a true and impartial description, and this correction would leave post-adoption arguments over interpretation of the phrase "a matter of public record" where they belong-with the courts after adoption and not in the Summary where they do not belong.

PRAYER FOR RELIEF

Plaintiff Fair Share requests that the Court grant the following relief:

- A. Declare that the Lieutenant Governor's determination that the prepared summary of the Fair Share Act is true and impartial is incorrect as a matter of law;
- B. Declare that the prepared summary of the Fair Share Act is not true and impartial;
- C. Issue an injunction requiring the Defendants to correct the prepared summary for the ballot with regard to the inaccuracies detailed above (Fair Share shall submit a proposed corrected summary), without requiring recirculation of the initiative in
- D. Award Fair Share its reasonable costs and attorney's fees; and
- E. Grant Fair Share such other relief as the Court deems necessary and proper.

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RESPECTFULLY SUBMITTED this 14th day of November, 2019.

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Counsel for Plaintiff

By



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Certificate of Service

I hereby certify that a true and correct
copy of the foregoing document
was served by mail and e-mail upon
the following this 14th day of November, 2019.

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